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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re ALONDRA M. et al., Persons  
Coming Under the Juvenile Court  
Law.

B291366  
(Los Angeles County  
Super. Ct. Nos. DK15911C,  
DK15911D)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

HECTOR M.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los  
Angeles County, Akemi Arakaki, Judge. Affirmed.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, Aileen Wong, Senior Deputy County Counsel, for Plaintiff and Respondent.

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Hector M., Sr. (father) appeals from the order denying his petition to change court orders under Welfare and Institutions Code section 388,<sup>1</sup> and the findings and order terminating his parental rights under section 366.26. Father contends the court committed prejudicial error by denying his section 388 petition.<sup>2</sup> He further contends the court erred in finding inapplicable the parental or sibling relationship exceptions to termination of parental rights under section 366.26, subdivision (c)(1)(B)(i) and (v). We affirm.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> Section 388 permits a parent to petition the court for a hearing to change an earlier order in the dependency proceeding.

## FACTUAL AND PROCEDURAL BACKGROUND

Vanessa S. (mother)<sup>3</sup> has four children. The older two were born in 2004 and 2007 and share a different father. The younger two, Alondra M. (born September 2014) and Hector M., Jr. (born August 2015), are father's children and are the subject of father's appeal.

### *Initial dependency proceedings*

In March 2016, the Los Angeles County Department of Children and Family Services (Department) detained all four children from parental custody and filed a petition alleging the children were at risk of harm under Welfare and Institutions Code section 300, subdivisions (a) and (b), based on domestic violence between both fathers and mother, as well as substance abuse by father and mother. In June 2016, the court sustained the domestic violence and substance abuse allegations against father, and ordered him to undergo random drug testing and participate in a drug/alcohol program with aftercare, a domestic violence program, parenting classes, and individual counseling to address case issues including the effect of domestic violence

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<sup>3</sup> Mother is not a party to this appeal, and father does not challenge any orders with respect to mother's two older children.

on children.<sup>4</sup> The court ordered monitored visitation for the parents, three times a week for two hours a visit, monitored by a Department-approved monitor at a Department-approved location. The older siblings were in a separate placement, and the court ordered the Department to arrange weekly sibling visits.

By January 2017, father had only partially completed his reunification services. He and mother were homeless, but had been approved for subsidized housing. Father was participating in a parenting program and therapy, but he had not enrolled in a domestic violence program because he was unable to find a low-cost program. Even after the social worker provided father with additional referrals, father believed he did not need to take a domestic violence program. The Department reported that father “appears to continue to be in denial of why the family came to the attention of the Department and that the children were victims of emotional abuse.”

Father completed his outpatient substance abuse program in January 2017; and the program reported father had seven negative urine tests between July 2016 and January 2017. Over the same time frame, father missed seven of the court-ordered weekly random drug tests.

Visits with the children were initially monitored by paternal relatives, who were permitting unmonitored contact

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<sup>4</sup> Because mother is not a party to this appeal, our discussion focuses solely on the court orders concerning father.

between the children and mother and father, in violation of court orders that the parents' visits be monitored and separate. The caregiver also reported neither parent would stay longer than an hour for the visit. Father visited the children only once between November 30, 2016 and January 14, 2017, after the children were placed with a new caregiver.

At the six-month hearing, the court found father in partial compliance with the case plan, and set the matter for a 12-month review hearing.

Father's visits over the next six months were inconsistent, and there were problems with father trying to be part of mother's visits, contrary to court orders for the parents to visit separately. The caregiver cancelled a visit in March 2017 after father arrived 45 minutes late. The paternal grandmother responded by calling and texting the caregiver with profanities. The caregiver reported father had shown up to visits under the influence, and would bring other family members to the visits despite being asked not to do so. Father would also act inappropriately during the visits, complaining, calling paternal relatives, and making false promises to the children. His daughter, who was around two and half years old at the time, had started saying "[n]o daddy" when walking to the visits. Father and mother received subsidized housing and moved into a two-bedroom apartment, but mother reported that they were struggling financially, without a car or enough food.

The Department provided an update to the court at the end of June 2017, reporting that father was visiting the children, but would show up dirty and ask the caregiver to end the visit at any time, usually asking to leave if the children asked for food or started crying. Father was not in individual counseling, but started a domestic violence program on June 21, 2017. On June 26, 2017, father tested positive for methamphetamine; he then missed a drug test the following week.

### ***Father's reunification services terminated***

At the 12-month review hearing in July 2017, the court terminated reunification services for both parents, as well as the older sibling's father, and scheduled a hearing under section 366.26 for permanency planning.

In November 2017, the Department reported that the children had sibling visits with their older half-siblings once every month or two. Their caregiver was committed to adopting them, and a home study was under way. Father continued his weekly visits, but his conduct remained problematic, causing stress for the children. Shortly thereafter, the caregiver informed the Department that she no longer wanted to adopt. Although initially she was willing to continue caring for the children until a new adoptive family could be found, by January 2018, she asked for them to be placed with another family as soon as

possible. The children were moved to a foster-adoptive placement in January 2018.

### ***Father's section 388 petition***

In February 2018, father filed a petition under section 388 to reinstate reunification services for an additional six months, alleging his compliance with case plan requirements and the fact that he was visiting the children as often as permitted, seeing a psychiatrist, and complying with his medications. He provided completion certificates from his outpatient substance abuse program and parenting programs from 2017. Father attached a letter from Project Fatherhood at Children's Institute stating that he had completed intake in May 2017 and had completed 12 of 26 possible weekly sessions. A similar report from a domestic violence program stated he began domestic violence/anger management sessions in July 2017 and had completed 10 of 52 sessions. Father alleged that the requested change was in the children's best interests because they were not bonded to their caregivers and he had made significant changes in his life to be a better parent to them.

The Department responded to father's section 388 petition in March 2018, noting that father had not drug tested since November 2016, nor was he participating in individual counseling with a licensed therapist. When a social worker contacted the domestic violence program, the representative reported that while father had a good

attitude, he had an issue with attendance and needed to “pick up” his attendance. The new caregivers expressed concerns about father’s behaviors during visits. He would show up tired and unable to play with the children. Despite knowing that the children’s doctor said they were overweight and that the caregivers were trying to feed the children healthy foods, father would bring and buy junk food for the children. According to the foster father, father was verbally aggressive, saying the children should not be calling the foster father “dad” and accusing foster father of physically hurting the daughter. The Department noted father had not visited the children for two weekends in March 2018. The children were doing extremely well in a safe, loving, and stable home with their current caregivers, who continued to appropriately care for the children, and it appeared that the children were “bonded’ to their current caregivers.” According to the Department, “Father had not seemed interested in caring for the children until father found out that the children were moved to a prospective adoptive home.”

The court heard father’s section 388 petition in July 2018. Father admitted into evidence various letters showing the status of his compliance with court orders. One of the exhibits was a March 22, 2018 letter from father’s domestic violence program stating he had attended 15 out of 52 sessions. Father testified about his efforts to comply with the case plan and his visits with the children. He testified that he had only missed one or two visits until May 2018,



when he was incarcerated for two months for driving with a suspended license. During visits, he would read to the children, color with them, bring them puzzles, and teach them sign language. He stated he never had to discipline them during visits.

After argument by the parties, the court denied father's section 388 petition, finding that father had not shown changed circumstances or that the requested order was in the children's best interests.

### ***Section 366.26 hearing***

The court agreed to consider the testimony from father on his 388 petition as part of its determination at the section 366.26 hearing. Father's counsel asked the court to consider an alternate permanent plan and to find applicable either the parental relationship exception or the sibling relationship exception to termination of parental rights. The court found neither exception applicable, found the children were adoptable, and terminated the parental rights of both parents.

## **DISCUSSION**

### ***Section 388 petition***

Father contends the trial court erred when it denied his section 388 petition. We disagree. We review the denial

of a section 388 petition for an abuse of discretion. (*In re J.T.* (2014) 228 Cal.App.4th 953, 965.) “Section 388 accords a parent the right to petition the juvenile court for modification of any of its orders based upon changed circumstances or new evidence. [Citations.] To obtain the requested modification, the parent must demonstrate both a change of circumstance or new evidence, and that the proposed change is in the best interests of the child. [Citations.] [¶] Section 388 provides an “escape mechanism” for parents facing termination of their parental rights by allowing the juvenile court to consider a legitimate change in the parent’s circumstances after reunification services have been terminated. [Citation.] This procedural mechanism, viewed in the context of the dependency scheme as a whole, provides the parent due process while accommodating the child’s right to stability and permanency. [Citation.] After reunification services have been terminated, it is presumed that continued out-of-home care is in the child’s best interests. [Citation.] Section 388 allows a parent to rebut that presumption by demonstrating changed circumstances that would warrant modification of a prior court order. [Citation.]” (*In re Alayah J.* (2017) 9 Cal.App.5th 469, 478, fn. omitted.)

Father claims he showed changed circumstances from July 2017 to July 2018 because he went from being homeless for several months and being recently incarcerated to attending anger management and domestic violence classes, participating in therapy, maintaining sobriety, and visiting

the children consistently. At best, father's evidence reflects changing—not changed—circumstances. Father's ongoing efforts to satisfy the requirements of his case plan, though commendable, do not satisfy the requirement of a substantial change of circumstances. (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 222–223.)

Even if the court found changed circumstances, father does not explain why his requested change in court order would be in the children's best interests. Father provided no evidence that he would be in a position to offer permanency or stability to his young children with an additional six months of services. The children were removed from father's care when they were both very young, and by the time of the section 388 hearing, they were two and three years old. While they had only lived with their current foster parents for six months, the Department reported they were bonded to their foster parents and were doing exceptionally well. There was evidence that the new foster parents provided a nurturing environment and were committed to adopting the children. Because father had not shown that an additional six months of reunification services would serve the children's best interests, it was not an abuse of discretion to deny his section 388 petition. (See *In re Casey D.* (1999) 70 Cal.App.4th 38, 48–49.)

***Parental and sibling relationship exceptions to termination of parental rights under section 366.26***

Father contends the court erroneously denied application of the parental relationship exception under section 366.26, subdivision (c)(1)(B)(i) and the sibling relationship exception under section 366.26, subdivision (c)(1)(B)(v). We disagree on both counts. “At a section 366.26 hearing, the juvenile court selects and implements a permanent plan for the dependent child.” (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1299 (*Noah G.*)). At that stage of the proceedings, the preferred plan is adoption. (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 645 (*Breanna S.*)). “First, the court determines whether there is clear and convincing evidence the child is likely to be adopted within a reasonable time. [Citations.] Then, if the court finds by clear and convincing evidence the child is likely to be adopted, the statute mandates judicial termination of parental rights unless the parent opposing termination can demonstrate one of the enumerated statutory exceptions applies.” (*Id.* at pp. 645–646.)

In reviewing challenges to a court’s decision to deny application of a statutory exception to adoption, we employ the substantial evidence or abuse of discretion standard of review, based on the nature of the challenge. (*In re J.S.* (2017) 10 Cal.App.5th 1071, 1080; *In re K.P.* (2012) 203 Cal.App.4th 614, 621–622.) For factual determinations, such as whether a parent has shown consistent visitation and the existence of a parental relationship or a close and strong

bond with siblings, we apply a substantial evidence standard of review. (*In re J.S.*, *supra*, at p. 1080; *In re K.P.*, *supra*, at p. 622.) Once the court has found adequate evidence of a parental or sibling relationship, it must determine whether termination of parental rights would be detrimental to the child as weighed against the benefits of adoption. (*In re J.S.*, *supra*, at p. 1080; *Noah G.*, *supra*, 247 Cal.App.4th at pp. 1299–1300.) Because the second determination requires the court to exercise its discretion, we apply an abuse of discretion standard of review. (*In re J.S.*, *supra*, at p. 1080; *Breanna S.*, *supra*, 8 Cal.App.5th at p. 647; *Noah G.*, *supra*, at pp. 1299–1300.) “In the dependency context, both standards call for a high degree of appellate court deference.” (*In re J.S.*, *supra*, at p. 1080 [sibling relationship exception].)

#### 1. Parental relationship exception

The beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i), applies only if “[t]he court finds a compelling reason for determining that termination would be detrimental to the child” because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) In analyzing whether a parent has met his or her burden to show application of the parent-child relationship exception, the dependency court considers two prongs. The first prong

examines the quantitative question of how consistently a parent has maintained visitation with the child. (*In re Grace P.* (2017) 8 Cal.App.5th 605, 612.) “[T]he second prong involves a qualitative, more nuanced analysis, and cannot be assessed by merely looking at whether an event, i.e. visitation, occurred. Rather, the second prong requires a parent to prove that the bond between the parent and child is sufficiently strong that the child would suffer detriment from its termination.” (*Id.* at p. 613.)

The parent asserting the parental relationship exception will not meet his or her burden by showing the existence of a “friendly and loving relationship,” an emotional bond with the parent, or pleasant, even frequent, visits. (*In re J.C.* (2014) 226 Cal.App.4th 503, 529; *In re C.F.* (2011) 193 Cal.App.4th 549, 555; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418–1419.) “A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption.” (*Breanna S.*, *supra*, 8 Cal.App.5th at p. 646.) The parent must show she occupies a parental role in the child’s life, and that “the child would suffer detriment if his or her relationship with the parent were terminated.” (*In re C.F.*, *supra*, at p. 555; see also *Breanna S.*, *supra*, at p. 646; *In re G.B.* (2014) 227 Cal.App.4th 1147, 1165.) Courts consider “[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs.” (*In re Autumn H.* (1994) 27 Cal.App.4th

567, 576.) A court must find that the parent-child relationship “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*Id.* at p. 575.)

“Moreover ‘[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.’ [Citation.]” (*Breanna S.*, *supra*, 8 Cal.App.5th at p. 646.)

Father has not shown that the court abused its discretion in deciding he had not met the requirements of the parental relationship exception. To carry his burden of proof, father must show not only a parental bond between himself and his children, but that the detriment suffered by the children if father’s parental rights were terminated outweighs the benefits of adoption. (See *Noah G.*, *supra*, 247 Cal.App.4th at p. 1300; *Breanna S.*, *supra*, 8 Cal.App.5th at p. 647.) Father’s evidence of a parental bond consisted of his testimony about the activities he did with them during his

weekly monitored visits. He testified he taught them sign language and brought them puzzles, but admitted he never had to discipline them. The court also had before it the Department's reports that expressed concerns about father's inappropriate conduct during visits, asking to leave when the children asked for food or started crying. In addition, father offered no evidence about what detriment the children would suffer if his parental rights were terminated. He argued that the children had not yet bonded with their current caregivers because they had only lived together for a short time. However, the Department reported that the children were doing well with the new caregivers, who were committed to adopting them. On this record, we cannot say the court abused its discretion in finding the parental relationship exception inapplicable.

## 2. Sibling relationship exception

In assessing whether the sibling relationship exception applies, a juvenile court must first determine “whether terminating parental rights would substantially interfere with the sibling relationship.” (*In re D.O.* (2016) 247 Cal.App.4th 166, 174 (*D.O.*) 173–174; see § 366.26, subd. (c)(1)(B)(v).) In assessing this threshold question, the court is to “consider[] the nature and extent of the [sibling] relationship,” including the following factors, among others: (1) “whether the child was raised with a sibling in the same home;” and (2) “whether the child shared significant common



experiences or has existing close and strong bonds with a sibling.” (§ 366.26, subd. (c)(1)(B)(v).) If the court determines that the termination of parental rights will interfere with the sibling relationship, then the court must “weigh the child’s best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption.” [Citation.]” (*D.O., supra*, at pp. 173–174; see § 366.26, subd. (c)(1)(B)(v) [directing juvenile court to consider “whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption”].) The sibling relationship exception is rarely used, especially in cases involving younger children where the importance of stability and permanency takes precedence. (See *D.O., supra*, at p. 174; see also *In re L. Y. L.* (2002) 101 Cal.App.4th 942, 951–952.)

Father argues that because the children had lived with their older siblings (ages 8 and 11) until they were detained at 8 months and 17 months old, respectively, and because the court ordered sibling visits which took place once every month or two, he had demonstrated a sibling bond as a matter of law. Turning to the question of whether the benefit of preserving the children’s relationship with their older siblings outweighed the benefits of adoption, father simply argues that their sibling ties would become more important as the children grew older. We are unconvinced by father’s argument, and conclude that the court did not

abuse its discretion when it found the sibling relationship exception inapplicable.

### **DISPOSITION**

The order terminating parental rights is affirmed.

MOOR, J.

We concur:

RUBIN, P.J.

KIM, J.